

REMARKS

Claim Status & Amendments

Upon entry of this Amendment, claims 1-22 are pending, of which claim 1 is independent. Claim 1 is currently amended to replace the word “absorb” with the word “comprise” and to recite that the antimicrobial constituent is applied as an aqueous solution in which the proportion of all of the antimicrobial constituents together is from 0.2 to 8% by weight, based on the weight of the solution. Claim 8 is amended to recite an aqueous solution in which the proportion of all of the antimicrobial agents together is from 0.2 to 8% by weight, based on the weight of the solution. Support for the amendments may be found at least at page 4, lines 12-14, and page 5, lines 17-19 of the Specification as-filed, for example. Thus, no new matter has been added.

Rejections Under 35 U.S.C. § 103(a)

Claims 1-9 & 13-22

Claims 1-9 and 13-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith *et al.* (EP 0 190 630, hereinafter “Smith”) in view of Krallmann *et al.* (CA 2,292,983, hereinafter “Krallmann”). This rejection is respectfully traversed.

Independent claim 1 recites, *inter alia*, an antimicrobial polymer-based plastics foodstuff casing comprising polyamide or polyamide layers, wherein the antimicrobial constituent is applied as an aqueous solution in which the proportion of all of the antimicrobial constituents together is from 0.2 to 8% by weight, based on the weight of the solution, and wherein the polyamide casings or polyamide layers comprise up to about 6% by weight of water. Applicant submits that neither Smith nor Krallmann discloses at least the aforementioned features of independent claim 1.

Smith is directed to high-moisture cellulosic casings, which are very different from the “polymer-based plastics foodstuff casing,” as claimed. Smith teaches “‘ready-to-stuff’ casings contain[ing] at least 40 percent and preferably at least 55 percent water by dry weight of casing.”¹ Smith also teaches that

the higher water levels of the subject casings not only provide economic, benefits in terms of raw materials but it was also found that the performance of the casing per se in terms of feed

¹ Smith, 8:25-26 (Aug. 13, 1986).

characteristics in stuffing equipment is also improved in many instances over other premoisturized ready-to-stuff casings prepared with lower water contents and higher polyol loadings.²

Smith's "at least 40 percent and preferably at least 55 percent water by dry weight of casing" lies completely outside of Applicant's claimed range. Nowhere does Smith teach or suggest casings comprising "up to about 6% by weight of water," as claimed. A casing comprising at least 40% water does not suggest one having not more than about 6% water and, indeed, teaches directly away from such a casing. Nor does Smith teach or suggest casings wherein the antimicrobial constituent is applied as an aqueous solution in which the proportion of all of the antimicrobial constituents together is from 0.2 to 8% by weight, based on the weight of the solution. Instead, Smith teaches that the concentration of *p*-hydroxybenzoates is preferably from about 100 to about 1100 ppm by weight of liquid in the casing, which corresponds to about 0.01 to about 0.11 weight %. According to Smith, concentrations higher than 0.2% may be used, but this contributes "added risk of diffusion into the meat product after stuffing which may mask the natural formation of slime or greening normally observed with deterioration and spoilage of meat products."³ Thus, Smith teaches away from using *p*-hydroxybenzoates in the ranges claimed.

Krallmann was cited for allegedly teaching a multilayer polyamide-based tubular film conditioned in ready-to-fill form.⁴ Krallmann is silent with regard to percentage by weight of water. Thus, Applicant respectfully submits that Krallmann does not add anything that would remedy the aforementioned deficiency in Smith, *i.e.*, there is no suggestion provided by Krallmann to reduce the water content in Smith from greater than 40% to no more than about 6%. Accordingly, one of ordinary skill in the art could not have combined Smith and Krallmann to achieve the claimed invention, and even if Smith and Krallmann had been combined, Smith, Krallmann, and the combination thereof fails to teach or suggest the advantages of casings comprising up to about 6% by weight of water, as claimed.

Thus, the subject matter of claim 1 is not rendered unpatentable by Smith, Krallmann, or the combination thereof. Claims 2-9 and 13-22 depend from independent claim 1. Accordingly,

² *Id.* at 12:18-24.

³ *Id.* at 15:4-7.

⁴ See Office Action, 3 (Jul. 8, 2010).

Applicant respectfully requests favorable reconsideration and withdrawal of the rejection of claims 1-9 and 13-22 under 35 U.S.C. §103(a) as being unpatentable over Smith in view of Krallmann.

Claims 10-12

Claims 10-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith *et al.* in view of Krallmann and further in view of Quiñones *et al.* (U.S. Patent No. 6,183,826, hereinafter “Quiñones”). This rejection is respectfully traversed.

Quiñones is directed to cellulosic casings, which are very different from the “polymer-based plastics foodstuff casing,” as claimed. Quiñones was cited for allegedly teaching that it is common in the art to coat the casings, especially the inner side of the casing, using a spray during the shirring process.⁵ Applicant respectfully submits that such teaching would not add anything to remedy the aforementioned deficiencies in Smith and Krallmann.

Thus, Smith, Krallmann, Quiñones, and the combination thereof neither teach nor suggest the food casing as claimed. Consequently, the subject matter of claims 10-12 is not rendered unpatentable by Smith, Krallmann, Quiñones, or the combination thereof. Accordingly, Applicant respectfully requests favorable reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) of claims 10-12 as being unpatentable over Smith in view of Krallmann and further in view of Quiñones.

Conclusion

In view of the remarks above, Applicant respectfully submits that the stated grounds for rejection have been properly addressed and that all of the claims are patentable, and so request favorable action thereon. The Examiner is invited to contact the undersigned if any additional information is required.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-4254, under Attorney Docket No. 2901886-000022

⁵ Final Office Action, 5 (Jul. 8, 2010).

DATED: January 5, 2011

920 Massachusetts Avenue, N.W.
Suite 900
Washington, DC 20001

Telephone: 202-508-3400
Facsimile: 202-508-3402

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.**

/C.G. Moore/
Chester G. Moore, Ph.D.
Reg. No. 53,345
Telephone: 985-819-8420

David W. Woodward
Registration No. 35,020